

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 294 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

- =====
- 1 Whether Reporters of Local Papers may be
allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the
fair copy of the judgment ?
- 4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?
- 5 Whether it is to be circulated to the
civil judge ?

=====

BADELAL RAMLAKHAN PATEL - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

=====

Appearance :

MR CHETAN B RAVAL for Applicant(s) : 1,
Mr L R Pujari, APP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 04/12/2007

ORAL JUDGMENT

1. By way of this Special Criminal Application under Article 226 of the Constitution of India, the

petitioner seeks direction to quash the orders dated 18.11.2006 and 16.1.2007, Annexures 'B' and 'C' respectively passed by the Dy. Commissioner of Police, Zone 5, Ahmedabad City in exercise of powers conferred by section 56 of Bombay Police Act, 1951, and the Joint Secretary, Home Department, Sachivalaya, Gandhinagar whereby the present petitioner has been externed from the jurisdiction of the Police Commissioner of Ahmedabad and the contingency districts of Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana.

2. The petitioner has challenged the order of externment by preferring appeal before the Joint Secretary, Home Department and the said appeal was partly allowed and the term of externment of 2 years was reduced to one year.

Heard the learned advocate for the petitioner and the learned AGP for the respondent-State.

3. It is submitted by the learned advocate for the petitioner that the impugned order has been passed by the authorities without considering the basic object of the Bombay Police Act and the basic requirements for passing of the order of externment that there is

likelihood of disturbance of the public order by the alleged activities of the petitioner. He also submitted that the authorities have gravely erred in not considering the fact that there is no disturbance to the maintenance of public order by the alleged activities of the petitioner. It is also submitted by the learned advocate that the allegations made by the respondent authority in the show cause notice that the petitioner is a dangerous person of criminal minded nature and always possesses deadly weapons are totally false and frivolous. That for the alleged activities of the petitioner, only one offence is lodged before the Vatva Police Station which is pending enquiry. Therefore, the submission of the learned advocate is that the order of externment passed by the respondent authorities is clear non-application of mind and thus the said orders are required to be quashed and set aside. It is further submitted that the show cause notice came to be issued on 15.12.2005 and petitioner has filed reply on 13.2.2006 and order of externment was came to be passed on 18.11.2006. Thus, the order of externment is passed after 9 months and no explanation for the delay has been stated. and on this ground also the impugned orders are required to be quashed and set aside.

4. It is also his submission that the respondent authority did not consider the statement of the independent witnesses and no reason has been given as to why he may be externed from the areas as mentioned above.

5. Learned APP, on the other hand, submitted that the respondent authorities are subjectively satisfied about the necessity of externing the petitioner from the areas as aforesaid. He submitted that on the basis of the documentary evidence, it was found that the petitioner was a dangerous and headstrong person and that various persons whose names could not be disclosed because of fear of the petitioner, have given statements that the petitioner is indulging in various anti-social and criminal activities. It was also found that various FIRs were registered against the petitioner. Therefore, on the basis of enough material to proceed against the petitioner in terms of section 56, the deponent authorised the Assistant Commissioner of Police, Ahmedabad City to proceed and hold inquiry under section 59 (1) of the Act against the petitioner. The respondent authorities, after considering his reply and the statements of his defence witnesses and the material available on record, came to the conclusion that the

allegations levelled against him are found to be proved and therefore, an order of externment should be passed and hence the impugned order was passed. So far as the delay in passing the externment order is concerned, it is denied by the Superintendent of Police, Valsad District in his affidavit-in-reply that there is no delay in passing the externment order. It is also stated in the said affidavit-in-reply that the petitioner was afforded ample opportunity to defend his case and the principles of natural justice were sufficiently complied with.

6. Having heard the learned advocate for the petitioner and the learned APP, this court is of the opinion that the petitioner, during the externment period, has not breached the order passed by the competent authority and no untoward incident has taken place. The externment order is dated 18.11.2006 and the period of externment is for one year. It is pertinent to note that the show cause notice came to be issued on 15.12.2005 and the petitioner has filed reply on 13.2.2006 and order of externment was came to be passed on 18.11.2006. Thus, the order of externment is passed after 9 months and the delay has not been explained and on this ground also the impugned orders are required to be quashed and set aside. It transpires from the records

that only one offence is registered against the present petitioner for the offences under sections 143, 147, 148, 149, 337, 427, 294, 223 and 506 (1) of the Indian Penal Code and under section 135 of the Bombay Police Act. No other offence is registered against the present petitioner during the above period. On perusal of the record, it is also to be noted that the subjective satisfaction of the respondent-authorities is vitiated on account of non-application of mind. Taking into consideration the punishment for the above referred offences and the nature of offences, the orders passed by the respondent authorities are required to be quashed and set aside.

7. In the result, this Special Criminal Application is allowed. The impugned order of externment dated 18.11.2006 passed by respondent No.2 and order dated 16.1.2007 passed by the respondents No.1 are quashed and set aside. Direct service is permitted. Rule is made absolute accordingly.

[M.D. SHAH, J.]

mSP